IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1561 OF 1990

M/s. Dipak Jems Star .. Petitioners
V/s.
Union of India & Ors. .. Respondents

WITH
WRIT PETITION NO. 1606 OF 1990

M/s. Brite Stone .. Petitioners
V/s.
Union of India & Ors. .. Respondents

Mr. M. Jayakar with Mr. A. Panikar i/b. M/s. Gagrat & Co. for the Petitioners
Mr. P.S. Jetly for the Respondents (in WP. 1561/1990)
Mr. H.V. Mehta for the Respondents (in WP. 1606/1990)

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 20.01.2005

P.C.:-

1. The learned counsel for the Petitioners in all these Petitions has made a statement that the Bank Guarantees have already been renewed and handed over to the concerned authorities. The learned counsel appearing for the Revenue after verifying the said fact, makes a statement that the renewed Bank Guarantees have been received by the Revenue. Statements made by both the parties are taken on record.

2. The Petitioners in these petitions are in the business of import of steel pots for quite some time and have been operating under valid licence. The dispute is essentially generated on account of the Respondents not allowing the clearance of various consignments of goods

which have been imported under that licence. A detailed discussion of the factual aspects is not necessary for disposal of these petitions.

3. This Court while granting rule in these petitions was pleased to grant interim relief and allow the clearance of the concerned consignments on Petitioners paying basic customs duty at the rate of 35% on the said consignments plus 5% auxiliary duty with P.O. Bonds for the differential duty i.e. the difference between 107% ad-valorem and 40% ad-valorem customs duty with bank guarantee of a nationalised bank for 25% of the differential duty.

4. In pursuance of the aforesaid interim order, the consignments covered by the relevant bills of entry and invoices pertaining to the Petitioners were allowed to be cleared. In other words, the interim order operated in favour of all the Petitioners and the goods were allowed to be cleared on compliance of the above conditions.

5. Now what remains is the final adjudication of duty liability i.e. finalisation of the provisional assessment on the basis of which the goods were allowed to be cleared.

6. The learned counsel appearing for the Petitioners submits that the Petitioners shall have no objection if

the Respondents desire to finally adjudicate upon the duty liability so as to finalise the provisional assessment made by them. The Petitioners, through their Counsel, undertake to co-operate with the adjudicating authority in the adjudication proceedings.

7. The learned counsel appearing for the Revenue/adjudicating authority also expressed desire to finally adjudicate upon the duty liability of the Petitioners, so as to finalise the assessment of duty, within a period of four months from today, after following principles of natural justice.

8. Having heard the rival parties and looking to the consensus between the parties, we also feel that the duty liability can be more conveniently adjudicated upon in the departmental adjudication proceedings in which disputed questions of fact can also be gone into which this Court may not be able to resolve in exercise of writ jurisdiction under Article 226 of the Constitution of India.

9. In the above premises, Revenue is directed to proceed with the adjudication proceedings as expeditiously as possible and to finally conclude the assessment proceedings within four months from today.

10. The Petitioners shall keep the bank guarantees renewed and alive till the completion of adjudication proceedings and eight weeks thereafter. If the adjudication proceedings are not completed within four months from today, bank guarantees shall stand discharged, in that event, Petitioners would be relieved of their obligation to keep the Bank guarantees alive.

11. If the adjudication proceedings are not completed within four months from today and delay results in discharge of bank guarantees, then in that event, Chief Commissioner shall hold enquiry to fix the responsibility for the delay and consequent loss suffered by the Revenue and should submit report to this Court within four weeks thereafter.

12. With these directions all these Petitions are disposed of in terms of this order. Accordingly, rule is made absolute with no order as to costs.

13. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)